

The Orissa Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2011 CUTTACK, WEDNESDAY, DECEMBER 1, 2010 / MARGASIRA 10, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 15th November 2010

No. 9574—li/1(B)-161/1995-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th October 2010 in I.D. Case No. 116 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of M/s Utkal Galvaniser (Pvt.) Ltd. and its Workman Shri Gangadhar Swain was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 116 OF 2008
(Previously registered as I. D. Case No. 31 of 1996
in the file of the P. O., Labour Court, Bhubaneswar)

The 4th October 2010

Present :

Shri Raghbir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of M/s Utkal Galvaniser (P) Ltd., At Kapursingh, P.O. Oranda, Dist. Cuttack.	.. First-party Management
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And

Its Workman Shri Gangadhar Swain, At Guali, P.O. Dalijoda Berhampur, Charbatia, Dist. Cuttack.	.. Second-party Workman
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Appearances :

Shri S. T. Ullah, Authorised Representative	.. For the First-party Management
Shri T. Lenka, Authorised Representative	.. For the Second-party Workman

AWARD

This is a reference of an industrial dispute made by the Government of Orissa in the Labour & Employment Department vide their Order No. 61—li (B)/1-161/1995/LE., Dt. 2-1-1996 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li-21-32/2007-LE., Dt. 4-4-2008. The Schedule of Reference runs as follows :

“Whether the termination of services of Shri Gangadhar Swain, Helper/Mazdoor with effect from 7-6-1994 by the management of M/s Utkal Galvanisers (P) Ltd., At Kapursingh is legal and/or justified ? If not, what relief Shri Swain is entitled to ?”

2. The second party in his claim statement has taken the stand that since 1987 he had been a workman of the first party. The factory of the first party which was located at Jagatpur was shifted to Kapursingh. The management did not make provision for its employees' residence near the work-site. So, the workman used to come to the factory from his village riding on a bicycle covering a distance of 30 kms. For reasons beyond his control sometimes he used to come late by just five to ten minutes. Yet, he was not being allowed to enter inside the factory premises because of such late arrival. From 7-6-1994 onward he was not allowed to enter inside the factory and his services were terminated with effect from 7-6-1994 by way of refusal of employment. Thereafter, the management served him a notice on 10-6-1994 alleging frequent unauthorised absence. He submitted his showcause. The workman was going to the factory gate regularly till 5-9-1994 but he was not allowed to enter into the factory. Therefore, on 5-9-1994 he raised an industrial dispute. Thereafter, the management served a registered notice on the workman asking him to attend a Disciplinary Committee on 30-9-1994. Since he had already raised an industrial dispute he intimated the management that if the latter had the intention to settle the dispute, then it should come to the Conciliation Officer instead of asking him to appear before the Disciplinary Committee. The management did neither come to a settlement through conciliation nor did it conduct any enquiry and straightway dismissed him vide Letter Dt. 30-9-1994.

3. The first party in its written statement has contended that the services of the second party were not terminated with effect from 7-6-1994 but he was dismissed with effect from 30-9-1994. It is further contended that from March, 1993 the workman was in the habit of absenting from duties causing dislocation in the day-to-day working of the business of the management. He was often cautioned orally. From 7-6-1994 the workman absented from duties. However, on 10-6-1994 he had come to work. On that day he was served with a letter and the second party also submitted his reply thereto on the same day. Submitting his reply the workman left the factory premises and did not report for duty thereafter. The management sent letters asking him to join but he did not. On 21-9-1994 the management sent a notice asking him to face Disciplinary Committee but he did not. Instead, he raised a dispute before the Labour Officer. He also wrote to the management stating that he would agree to resume duties only if the management gave in writing to the Conciliation Officer that the services of the workman had been illegally terminated with effect from 7-6-1994. Since the workman disobeyed the management's order he was guilty of misconduct and was dismissed from service with effect from 30-9-1994.

4. The following issues have been framed :—

ISSUES

- (i) “Whether the termination of services of Shri Gangadhar Swain, Helper/Mazdoor with effect from 7-6-1994 by the management of M/s Utkal Galvanisers (P) Ltd., At Kapursingh is legal and/or justified ?
- (ii) If not, what relief Shri Swain is entitled to ?”

5. Neither the second party nor the first party has opted for adducing any evidence. On 16-8-2010 no step was taken by the workman. So, the management was asked to adduce evidence on 16-9-2010. On 16-9-2010 the management failed to make its appearance. Hence, the case was posted to 4-10-2010 for Award.

FINDINGS

6. *Issue No. (i)*—The reference is on the legality of the alleged termination of service of the second party with effect from 7-6-1994. But, the management has denied to have terminated the services of the workman with effect from 7-6-1994. According to the management, the workman was dismissed on 30-9-1994. The reference is not with regard to the alleged dismissal of services of the workman w.e.f. 30-9-1994. In the absence of any evidence from the side of the second party, who has challenged the legality of the alleged termination of services with effect from 7-6-1994 this Tribunal is not in a position to hold that the second party's services were terminated with effect from 7-6-1994 and he was not dismissed as alleged by the first party. On the other hand, it is forthcoming from the claim statement that even after the alleged termination of services with effect from 7-6-1994 the second party had received several letters from the management to which he had also given replies and it can be presumed that he was aware of the fact that vide Letter Dt. 30-9-1994 he had been dismissed. Despite of such knowledge the second party has not raised any dispute challenging the legality of the order of dismissal. In this case it would be beyond the scope of the reference to adjudicate on the legality of the dismissal order. So, merely on the ground that no domestic enquiry was preceded by the order of dismissal, this Tribunal is not in a position to hold the order of dismissal to be illegal. Be that as it may, the initial burden lies on the second party to adduce evidence and to *prima facie* establish that his services were terminated with effect from 7-6-1994 and that termination was either illegal or unjust. The workman having failed to adduce evidence, the issue No. (i) is to be answered against him.

7. *Issue No. (ii)*—As a natural consequence, Issue No. (ii) is also to be answered against the workman.

8. In the result, it is held that there being no termination of service of the workman with effect from 7-6-1994, the question of adjudication on its legality does not arise.

The reference is answered accordingly.

Dictated and corrected by me.

R. B. DASH
4-10-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

R. B. DASH
4-10-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

P. K. PANDA
Under-Secretary to Government